P.R. No. 3666/06
Presented by Shri Ramchandra Agrawal
dated 01/12/06

(3) (1)

CA 152

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 182 /2006

Single Bench

APPLICANTS :- (1) Smt. Dukala Bai, aged about 80 years, widow of Shyam Lal Gupta, R/o village Kota, District Bilaspur [C.G].

DEFENDANTS NO. 1, 3 & 4

(2) Vinod Kumar Gupta, aged about 38 years, S/o Laxmi Prasad Gupta,

(3) Rajesh Kumar Gupta, aged about 36 years, S/o Laxmi Prasad Gupta,

No. 2 & 3 resident of Mungeli Road, Kududand, Bilaspur, District Bilaspur [CG.].

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VERSUS

NON-APPLICANTS : (1) Smt. Kusum Bai Gupta, aged about 55 years, wife of Jagdish Prasad Gupta, Resident of Kududand, Bilaspur, District Bilaspur [C.G.]

PLAINTIFF

RESPONDENTS (2) Smt. Ambika Bai, aged about 60 years, wife of Durga Prasad Gupta, R/o Kilaward, Juna Bilaspur, District Bilaspur [C.G.].

DEFENDANTS

(3) Shatrugan Prasad, aged about 48 years, son of Late Shyam Lal Gupta, R/o Krishna Nagar Ward, Juna Bilaspur, District Bilaspur [C.G.].

(4) Smt. Nirmala Bai, aged about 46 years, wife of Krishna Kumar Gupta, Resident of Krishna Nagar Ward, Juna Bilaspur, District Bilaspur [C.G.]

(5) Jagdish Prasad Gupta, aged about 57 years, son of Rambharos Gupta, Resident of C/o Jagdish Kirana Sotres, main road Kududand, Bilaspur [C.G.].

(6) State of Chhattisgarh, Through – Collector, Bilaspur.

CIVIL REVISION UNDER SECTION 115 OF CIVIL PROCEDURE CODE

XI-HC-78

A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.R. No. 182

मामला क्रमांक ..... सन् 2006

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08/12/2006

Shri Ravindra Agrawal, counsel for the petitioner.

Heard.

In the peculiar facts and circumstances giving rise to this Civil Revision, it is being disposed of without notice to the respondents.

Brief facts are that the plaintiff/respondent Smt. Kusum Bai Gupta instituted a Civil Suit No. 14-A/2006 in the Court of Civil Judge, Bilaspur praying for the relief of declaration of title over the suit property mentioned in Schedule-A and also for a declaration that the defendant No. 7 is not the tenant of defendant No.4 and that the plaintiff was entitled to partition of 2/12th share of the suit property mentioned in schedule-( ) to ( ). Relief of issuance of permanent injunction restraining the defendant No. 4 from interfering in any manner with the possession of the plaintiff over the property mentioned in Schedule-A and a mandatory injunction for furnishing the accounts, was also sought.

The plaintiff valued the suit property at Rs.80,00,000/- and for purposes of jurisdiction valued the suit at 2/12th share of 80,00,000/- i.e. Rs.12,50,000/-. However, the plaintiff mentioned in para 20 of plaint that she was affixing Court fee at Rs.1060/- only for the aforesaid reliefs.

The defendant No. 1 to 4 and 6 filed an application (Annexure A-2) under Order VII Rule 11 of C.P.C. on 29.7.2006 raising a preliminary objection that the reliefs claimed by the plaintiff were under valued.

The learned District Judge, Bilaspur after hearing arguments on the said application under Order VII Rule 11 of C.P.C. instead of deciding it on merits held that the question of valuation of suit could not be decided without recording evidence and on this ground plaint was not liable to rejection at that stage. With the aforesaid observation, the learned District Judge disposed of the application under Order VII Rule 11 of the C.P.C. In this manner, the District Judge failed to exercise

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.R. No. 182

मामला क्रमांक ..... सन् 2006

(37)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

jurisdiction vested in the court as well as committed a procedural irregularity.

As held in **Salim Bhai & Others Vs. State of Maharastra & Others; 2003 SAR (Civil) 86,** the relevant facts which need to be looked into for consideration for deciding an application under Order VII Rule 11 of the C.P.C. are the averments in the plaint and the Trial Court can exercise the power under Order VII Rule 11 of C.P.C. at any stage of the suit before registering the plaint or after issuing summons to the defendant. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C., the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity.

In this view of the matter, at the stage of filing of an application under order VII Rule 11 of C.P.C., and before filing of written statement the learned District Judge was required to consider whether on accepting the valuation put by the plaintiff for purposes of jurisdiction of the Court, on its face value, the plaintiff was required to pay advalorem Court fee under Section 8 of the Suits Valuation Act. In view of the principle laid down by the Apex Court in Salim Bhai & Others (supra), the impugned order is unsustainable in law.

The learned District Judge, Bilaspur is directed to hear the parties afresh on the application under Order VII Rule 11 of C.P.C. filed by the defendants and to pass an order as to whether the reliefs claimed by the

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

C.R. NO 182

मामला क्रमांक ..... **सन् 200** 6

(38)

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश – 3 –	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Kvr	plaintiffs were on the face of the valuation put by the plaintiffs for purposes of jurisdiction, under valued for purposes of court fees and if so whether the plaintiff was required to pay advalorem court fees on the reliefs claimed. With the aforesaid observation, this Civil Revision is allowed. M.(C).P. No. 2173/2006 for grant of stay also stands disposed of. **Sd/-** **Dilip Raosaheb Deshmukh** **Judge**	